

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Harrisonburg Division**

ALIGN TECHNOLOGY, INC.,

Plaintiff,

v.

SMILES OF VIRGINIA FAMILY DENTAL  
CENTER, PLLC and DR. NIELS  
OESTERVEMB,

Defendants.

Civil Action No. 5:22-cv-00038-MFU

**STIPULATED INJUNCTION**

Upon stipulation of the parties, the Court hereby orders the following permanent injunction:

1. The Court has jurisdiction over the parties and the subject matter.
2. Align Technology, Inc. (“Align”), a Delaware corporation with its principal place of business at 410 North Scottsdale Road, Suite 1300, Tempe, Arizona 85281, is a global medical device company that sells dental and orthodontic products, including the Invisalign® clear aligner system for straightening teeth, and is the owner of the ALIGN and INVISALIGN families of trademarks, which it uses in connection with those products and with the Invisalign® system, in particular.
3. Align’s ALIGN family of trademarks includes, but is not limited to, the following trademarks at issue in this case: U.S. Trademark Registration No. 3181043 for ALIGN (incontestable); U.S. Trademark Registration No. 3259957 for ALIGN (incontestable); and U.S. Trademark Registration No. 6646547 for ALIGN (collectively, the “ALIGN Marks”).
4. Align’s INVISALIGN family of trademarks includes, but is not limited to, the following trademarks at issue in this case: U.S. Trademark Registration No. 4025403 for INVISALIGN (incontestable); U.S. Trademark Registration No. 3191195 for INVISALIGN (incontestable); U.S. Trademark Registration No. 3060471 for INVISALIGN (incontestable); U.S. Trademark Registration No. 3911988 for INVISALIGN (incontestable); U.S. Trademark Registration No. 3418121 for INVISALIGN (incontestable); and U.S. Trademark Registration No. 2409473 for INVISALIGN (incontestable) (collectively, the “INVISALIGN Marks”).
5. The above-referenced trademark registrations are valid and enforceable, and are in full force and effect. Align is the owner of all right, title, and interest in the registrations. Align’s rights in the ALIGN Marks and the INVISALIGN Marks have become incontestable (where noted

as such) under 15 U.S.C. § 1065, and, under 15 U.S.C. § 1115(b), the registrations are conclusive evidence of Align’s exclusive right to use the marks in commerce on and in connection with their associated goods and services. The ALIGN Marks and INVISALIGN Marks are not generic.

6. Under 15 U.S.C. § 1125(c)(2)(A), the INVISALIGN Marks are famous.

7. The ALIGN Marks and INVISALIGN Marks are entitled to protection under the Lanham Act and Virginia Common Law.

8. Align (“Plaintiff”) and Defendants Smiles of Virginia Family Dental Center, PLLC and Dr. Niels Oestervemb (collectively, “Defendants”) have settled their dispute, and as a term of the settlement Defendants hereby agree to the entry of a stipulated permanent injunction against Defendants.


9. A permanent injunction is hereby entered in favor of Plaintiff Align and against Defendants Smiles of Virginia Family Dental Center PLLC and Dr. Niels Oestervemb. Defendants and Defendant Smiles of Virginia Family Dental Center PLLC’s officers, owners, agents, subsidiaries, and employees (while acting in their capacity as employees of Smiles of Virginia Family Dental Center PLLC or Dr. Oestervemb), and all persons and entities in active concert or participation with them, are hereby permanently enjoined from using the ALIGN Marks and INVISALIGN Marks, or any colorable imitation thereof, or any other mark or designation confusingly similar to the ALIGN Marks and INVISALIGN Marks, in the provision of dental or orthodontic products and services.

10. Defendants irrevocably and fully waive any and all rights to appeal this stipulated injunction.

11. The Court shall retain jurisdiction over this matter to enforce the terms of this injunction and the related settlement agreement between the parties.

**IT IS SO STIPULATED AND AGREED**

Dated: January 30, 2023

By:   
Ryan V.P. Dougherty (VSB No. 78444)  
William R. Poynter (VSB No. 48672)  
KALEO LEGAL  
4456 Corporation Lane  
Suite 135  
Virginia Beach, Virginia 23462  
Tele: (757) 761-0934  
Fax: (757) 304-6175  
rdougherty@kaleolegal.com  
wpoynter@kaleolegal.com

Jennifer Seraphine (pro hac vice)  
Jacob S. Zweig (pro hac vice)  
TURNER BOYD  
702 Marshall Street  
Suite 640  
Redwood City, California 94063  
Tele: (650) 521-5930  
Fax: (650) 521-5931  
seraphine@turnerboyd.com  
zweig@turnerboyd.com

*Counsel for Plaintiff Align Technology, Inc.*

Dated: January 30, 2023

By:   
Stephen L. Pettler Jr., Esq. VSB #44436  
HARRISON & JOHNSTON, PLC  
21 S. Loudoun Street  
Winchester, VA 22601 Telephone: 540-667-1266  
Facsimile: 540-667-1312  
E-Mail: pettler@harrison-johnston.com

Gary L. Eastman Esq. (pro hac vice)  
EASTMAN IP  
401 W. A Street, Suite 1785  
San Diego, CA 92101 Telephone: 619-230-1144  
Facsimile: 619-230-1194  
E-Mail: gary@eastmanip.com

*Counsel for Defendants Smiles of Virginia Family  
Dental Center PLLC & Dr. Niels Oestervemb*

**PURSUANT TO STIPULATION, IT IS SO ORDERED**

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Michael F. Urbanski  
Chief United States District Judge